Supreme Court, U.S.
FILED
DEC 28 1994
OFFICE OF THE CLERK

(2)

No. 94-1005

IN THE

Supreme Court of the United States

October Term, 1994

JOSEPH E. HARHAI, *PRO SE*,

Petitioner,

vs.

THE HONORABLE GARY P. CARUSO, THE HONORABLE JOHN E. BLAHOVEC, THE HONORABLE CHARLES MARKER, THE HONORABLE GILFERT M. MIHALICH, Court of Common Pleas of Westmoreland County, Pennsylvania, THE HONORABLE JOSEPH A. HUDOCK, Superior Court Sitting in Pittsburgh, Pennsylvania, WILLIAM J. WIKER, Esquire, HENRY A. HUDSON, JR., Esquire, GARY A. FALATOVICH, Esquire, Attorney at Law, JANE E. KAYLOR-HART, an individual, RONALD BAUGHMAN, an individual, TONY GIUNTA, an individual, JOSEPH SHONDELMYER, an individual, WESTMORELAND COUNTY CHILDREN'S BUREAU, WESTMORELAND MENTAL HEALTH CENTER, THOMAS J. GODLEWSKI, Esquire,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VINCENT J. GROGAN, ESQUIRE
Counsel of Record
GROGAN, GRAFFAM, MCGINLEY & LUCCHINO, P.C.
Three Gateway Center
Twenty-Second Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 553-6300
Attorneys for Respondent Thomas J. Godlewski, Esquire

BATAVIA TIMES PRINTING, INC.—Telephone (716) 344-2000

19 pp

COUNTER-STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

I. Whether there exists an important question of federal law or other substantial consideration warranting review on certiorari of the September 7, 1994 Judgment Order of the United States Court of Appeals for the Third Circuit which affirmed the February 4, 1994 Order of the United States District Court for the Western District of Pennsylvania dismissing with prejudice Petitioner's Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)?

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the Petition for Writ of Certiorari on page ii and in the case caption to this Brief.

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF THE QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
CITATIONS OF THE OPINIONS AND JUDGMENTS DELIVERED BELOW	1
STATEMENT OF JURISDICTION	2
TEXT OF STATUTES	3
COUNTER-STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	10
ARGUMENT	11
CONCLUSION	13

TABLE OF AUTHORITIES

Page

Federal Statutes and Rules:

18 U.S.C. §1331 3

18 U.S.C. §1343 3

18 U.S.C. §1961, *et seq.* 4,6

28 U.S.C. §1254 3

28 U.S.C. §1254(1) 2

42 U.S.C. §1983 3,4,6,7,9

42 U.S.C. §1985 3,4,6

42 U.S.C. §1986 3,4,6

42 U.S.C. §1988 3,4,6,7,9

F.R.C.P. 12(b)(6) 1,6

Supreme Court Rule:

S.Ct.R. No. 10 11

No. 94-1005

IN THE

Supreme Court of the United States

October Term, 1994

JOSEPH E. HARHAI, *PRO SE*,

Petitioner,

vs.

THE HONORABLE GARY P. CARUSO, THE HONORABLE JOHN E. BLAHOVEC, THE HONORABLE CHARLES MARKER, THE HONORABLE GILFERT M. MIHALICH, Court of Common Pleas of Westmoreland County, Pennsylvania, THE HONORABLE JOSEPH A. HUDOCK, Superior Court Sitting in Pittsburgh, Pennsylvania, WILLIAM J. WIKER, Esquire, HENRY A. HUDSON, JR., Esquire, GARY A. FALATOVICH, Esquire, Attorney at Law, JANE E. KAYLOR-HART, an individual, RONALD BAUGHMAN, an individual, TONY GIUNTA, an individual, JOSEPH SHONDELMYER, an individual, WESTMORELAND COUNTY CHILDREN'S BUREAU, WESTMORELAND MENTAL HEALTH CENTER, THOMAS J. GODLEWSKI, Esquire,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITATIONS OF THE OPINIONS AND JUDGMENTS DELIVERED BELOW

On January 7, 1994 and February 4, 1994, the United States District Court for the Western District of Pennsylvania at Civil Action Number 92-655 issued Memorandum Opinions and Orders of Court granting Respondents' Motions to Dismiss Petitioner's First and Second Amended Complaints with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). Copies of the District Court's Memorandum Opinions and Orders of Court are collectively attached to the Petition for Writ of Certiorari as Appendix "A".

On September 7, 1994 the United States Court of Appeals for the Third Circuit issued a Judgment Order at Number 94-3098 which affirmed the Order of Court entered by the District Court on February 4, 1994. A copy of the Court of Appeal's Judgment Order is attached to the Petition for Writ of Certiorari as Appendix "A".

STATEMENT OF JURISDICTION

Petitioner submits that this Court has appellate jurisdiction pursuant to 28 U.S.C. §1254(1).

For the reasons discussed below, respondent submits that there is no important federal issue to be reviewed and certiorari should be denied. Therefore, there is no basis for jurisdiction.

TEXT OF STATUTES

1. 28 U.S.C. §1254 provides:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Petitioner cites as additional constitutional and statutory authority the Fifth (5th), Sixth (6th), Seventh (7th), Eighth (8th) and Fourteenth (14th) Amendments to the United States Constitution, 42 U.S.C. §§1983, 1985, 1986 and 1988 and 18 U.S.C. §§1331 and 1343 on page two (2) and in Appendix "A" of the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF THE CASE

Petitioner, Joseph E. Harhai, has filed a Petition for Writ of Certiorari, *pro se* requesting that this Court review a Judgment Order of the United States Court of Appeals for the Third Circuit. The Judgment Order was entered on September 7, 1994 at Number 94-3098.

The litigation which gave rise to the instant petition was commenced by petitioner with the filing of a 16 count Complaint in the United States District Court for the Western District of Pennsylvania ("District Court") on or about March 17, 1992. The defendants included, *inter alia*, four judges on the Court of Common Pleas of Westmoreland County, Pennsylvania, one judge on the Superior Court of Pennsylvania, four private attorneys, including Respondent, Thomas J. Godlewski, Esquire ("Attorney Godlewski"), petitioner's ex-wife, a Westmoreland County probation officer, a court reporter, the Westmoreland County Children's Bureau and the Westmoreland County Mental Health Center. The Complaint purportedly averred claims under 42 U.S.C. §§1983, 1985, 1986 and 1988, R.I.C.O., 18 U.S.C. §1961, *et seq.* and pendent state law claims for "Fraud, Deceit and Professional Negligence" against Attorney Godlewski. Petitioner's claims arose out of former custody proceedings involving his minor son in the Court of Common Pleas of Westmoreland County, Pennsylvania which took place in the 1970s and early 1980s. Attorney Godlewski filed a Motion to Dismiss the Complaint and supporting Brief.

Following the filing of a First Amended Complaint by petitioner, Attorney Godlewski again filed a Motion to Dismiss and supporting Brief to supplement his earlier Motion to Dismiss. In his First Amended Complaint, petitioner set forth the following allegations against Attorney Godlewski:

COUNT SEVEN

Joseph E. Harhai vs. Thomas J. Godlewski, Esquire, for Fraud, Deceit and Professional Negligence

45. Defendant, Thomas J. Godlewski, Esquire, knowingly, deceptively, and conspiratorially did commit malfeasance of office on or about June 26, 1980, in an act of collusion with the adversarial counsel, Henry A. Hudson, Jr., by failing to file for the Plaintiff, Joseph E. Harhai, an opposition answer to a Petition dated June 26, 1980, requesting a supersedeas before Superior Court of Pennsylvania, Sitting at Pittsburgh. The Defendant, Thomas J. Godlewski, Esquire, did undermine the Plaintiff, causing serious, legal, financial, and emotional distress.

* * *

COUNT FIFTEEN

Joseph E. Harhai vs. All Named Defendants for Civil Conspiracy

55. All of the above-named Defendants, acting together and in concert with each other, from on or about November 3, 1977 and continuing until the date of the preparation of this Complaint, about March 1, 1992, conspired together and with one another to deprive the Plaintiff of his constitutional rights to due

process of law, and with the intent to harm the Plaintiff and to prohibit the Plaintiff from exercising his rights to a fair and impartial judicial system, and to deprive the Plaintiff of his property.

By Opinion and Order dated April 7, 1993 the District Court dismissed with prejudice petitioner's First Amended Complaint as to the respondent judges with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). Subsequently, by Memorandum Opinion and Order dated January 7, 1994, the District Court dismissed with prejudice petitioner's R.I.C.O. and 42 U.S.C. §§1985 and 1986 claims against Attorney Godlewski from the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). With respect to petitioner's R.I.C.O. claims, the District Court held that since all of petitioner's alleged harm arose out of domestic relations disputes with his former wife, respondent Jane E. Kaylor-Hart, petitioner had not and indeed could not allege that the conduct of the respondents caused an injury to his "business or property" within the meaning of 18 U.S.C. §1964(c). The District Court dismissed with prejudice petitioner's claims under 42 U.S.C. §1985 for failure to allege on the part of the respondents any of the conduct prohibited therein. Petitioner's derivative claim under 42 U.S.C. §1986 was dismissed with prejudice for the same reason. The District Court also dismissed, without prejudice and with leave to amend, petitioner's claims under 42 U.S.C. §§1983, 1988 and pendent state law claims against Attorney Godlewski.

Petitioner filed a Second Amended Complaint on or about January 28, 1994. In his Second Amended Complaint, petitioner set forth the following allegations against Attorney Godlewski:

COUNT SEVEN

Joseph E. Harhai vs. Thomas J. Godlewski, Esquire for Fraud, Deceit, and Professional Negligence and for Deprivation of Plaintiff's Civil Rights Under 42 U.S.C.A. §§1983 and 1988

47. Defendant, Thomas J. Godlewski, Esquire, knowingly, deceptively, and conspiratorially did commit malfeasance of office on or about June 26, 1980, in an act of collusion with the adversarial counsel, Henry A. Hudson, Jr., by failing to file for the Plaintiff, Joseph E. Harhai, an opposition answer to a Petition dated June 26, 1980, requesting a supersedeas before Superior Court of Pennsylvania, Sitting at Pittsburgh. The Defendant, Thomas J. Godlewski, Esquire, did undermine the Plaintiff, causing serious legal, financial, and emotional distress.

This Defendant, acting under color of state law, deprived the Plaintiff of rights, privileges, and immunities secured and guaranteed by the Constitution and federal laws of the United States of America, arising out of a conspiracy between the above named and the other thirteen (13) named Defendants to deprive the Plaintiff of such rights, and the above named reached an agreement and/or understanding with one or another of the named state official or officials or Defendant actor or actors, and/or this Defendant, a private party or entity, planned and/or

conspired together to deprive the Plaintiff of a federal right, as more particularly and specifically described as follows:

> Defendant Thomas J. Godlewski, together with Defendant Henry A. Hudson, Jr., Esquire, another private Defendant herein, conspired and agreed with Judge Joseph Hudock, also a Defendant herein and a state official, to delay and to fail to seek to timely enter an Order of Court to dissolve a supersedeas until after the subject of said Order to wit: Defendant Jane E. Kaylor-Hart filed the jurisdiction of the Court, which actions served to deny Plaintiff his lawful child custodial and visitation rights.

* * *

COUNT FIFTEEN

Joseph E. Harhai vs. All Named Defendants for Civil Conspiracy

> 57. All of the above-named Defendants, acting together and in concert with each other, from on or about November 3, 1977, and continuing until the date of the preparation of this Complaint, about March 1, 1992, aspired together and with one another to deprive the Plaintiff of his constitutional rights to due process of law, and with the intent to harm the Plaintiff and to prohibit the Plaintiff from exercising his rights to a fair and impartial judicial system, and to deprive the Plaintiff of his property.

By Memorandum Opinion and Order dated February 4, 1994 the District Court entered a Final Order dismissing with prejudice petitioner's Second

Amended Complaint against Attorney Godlewski. The District Court held that petitioner failed to allege violations of 42 U.S.C. §1983 against the remaining respondents, including Attorney Godlewski, all private parties, because the Second Amended Complaint did not state with sufficient particularity and/or show with specific material facts that the private party respondents and the state official respondents reached an understanding or agreement or plotted, planned or conspired together to deprive petitioner of a federal right. Petitioner's §1988 claim for attorney's fees and costs was also dismissed by the District Court.

Petitioner subsequently filed a Notice of Appeal from the District Court Orders dated January 7, 1994 and February 4, 1994 on or about February 28, 1994 to the United States Court of Appeals for the Third Circuit. By Judgment Order dated September 7, 1994 the Court of Appeals affirmed the District Court's February 4, 1994 Order of Court.

Petitioner has now filed a Petition for Writ of Certiorari seeking this Court's discretionary review. For the following reasons, respondent Thomas J. Godlewski, Esquire respectfully submits that the Petition for Writ of Certiorari should be denied.

SUMMARY OF ARGUMENT

There is no important federal issue involved in this action. Petitioner seeks review of a Judgment Order of the United States Court of Appeals for the Third Circuit which involved the application of well-reasoned and controlling federal law to the facts pleaded by petitioner.

The United States Court of Appeals for the Third Circuit properly applied controlling law. The subject Judgment Order is not repugnant to the United States Constitution or any other federal law. The Judgment Order does not create a substantial conflict of laws and no important federal question is at issue. Moreover, in issuing its Judgment Order, the Court of Appeals did not depart from the accepted and usual course of judicial proceedings, nor did the court sanction such a departure by the District Court. As such, respondent Thomas J. Godlewski, Esquire respectfully submits that certiorari should be denied.

ARGUMENT

Judgment Orders issued by a United States court of appeals may be reviewed by this Court by writ of certiorari. Supreme Court Rule 10 "Considerations Governing Review on Writ of Certiorari" provides in pertinent part:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> > (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> > * * * * * * * * *
>
> > (c) When . . . a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Clearly, this action does not involve any of the above circumstances. Petitioner has not alleged that the Judgment Order issued by the Third Circuit Court of Appeals is in conflict with the decision of another

court of appeals on the same matter. Nor has petitioner alleged that the Third Circuit decided a federal question in a way in conflict with a state court of last resort. Moreover, the petition does not persuasively allege that in rendering its Judgment Order, the Third Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision. Lastly, the Court of Appeals has not decided an important question of federal law which has not been, but should be decided by this Court nor has the Court of appeals decided a federal question in a way which conflicts with an applicable decision of this Court. The present petition, like all of the prior pleadings, documents, motions and briefs filed by petitioner in the District Court and/or Court of Appeals merely discloses his frustration in failing to obtain what he considered to be his lawful custodial and visitation rights regarding his minor son in the Court of Common Pleas of Westmoreland County, Pennsylvania.

None of these considerations are applicable to this action. At issue here is the United States Court of Appeals for the Third Circuit's application of well-reasoned and controlling federal law to the particular facts of this claim. As such, respondent Thomas J. Godlewski, Esquire submits that the Petition for Writ of Certiorari should be denied.

CONCLUSION

For these reasons, respondent, Thomas J. Godlewski, Esquire, respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

VINCENT J. GROGAN, ESQUIRE
Counsel of Record
GROGAN, GRAFFAM, MCGINLEY
& LUCCHINO, P.C.
Three Gateway Center
Twenty-Second Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 553-6300
Attorneys for Respondent
Thomas J. Godlewski, Esquire